Rural and Regional Affairs and Transport Legislation Committee

Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) and Other Matters Bill 2003

SUBMISSION COVER SHEET

Inquiry Title: Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) and Other Matters Bill 2003

Submission No:

Submittor: Guy Maclean

Address: P.O. Box 129
Belrose NSW 2075

Phone: 0415 904-499

Fax 02 9975-1900

E-mail: guymac@mpx.com.au

General Comments

1. The Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill seeks to solicit mutual recognition of aviation related certification between Australia and New Zealand on behalf of air transport carriers operating pursuant to the Single Aviation Market (SAM) arrangements. The principle underpinning this Bill is the contention that the Australian and New Zealand aviation systems, while utilising different processes, offer equivalent totalised safety outcomes.

   The evidence reviewed by this submission clearly indicates that in key operational areas New Zealand's regulatory compliance framework provides for a lower level of mandated aviation safety hazard mitigation than does Australian law.

2. This submission therefore disputes the Bill's contention that both the Australian and New Zealand systems produce equivalent totalised safety outcomes. In contrast, the determination of a comparative totalised safety outcome between the two nation's aviation systems is inappropriate and a distortion of the concept of safety equivalence. This submission further contends that safety equivalence may only be determined in relation to the level of hazard mitigation provided by individual system components. A totalised safety and security comparison between these different aviation systems cannot be determined, as suggested by the Bill, in the form of a quasi-cumulative addition of individual components.

   Lower safety margins in a discrete area such as cabin operations cannot be offset against more stringent requirements in another separate operational area, for example, by increasing fuel management requirements. Should this contention be accepted then the absurd situation would exist wherein it would not be logically inconsistent, for example, for CASA to approve a reduction in single engine climb gradient requirements based on increased cabin crew training standards. Either way, under such rationale, a theoretical total end 'balance' or totalised system safety outcome would be maintained.

3. The Bill's Explanatory Memorandum states that as signatories to the Chicago Convention, Australia and New Zealand are both subject to ICAO audits and that these audit findings indicate that both systems have equivalent safety levels. This submission contends that compliance with ICAO benchmark standards does not comparatively rank the Australian and New Zealand aviation systems against each other. Rather, such audit findings only indicate that both systems meet or exceed a minimum required ICAO standard.

   The Bill's Explanatory Memorandum states that CASA has advised that a detailed analysis of these safety systems has been conducted and both sides are confident that aviation can interoperate safely in the form being considered. Considering that much evidence supports a contrary conclusion, this analysis must be provided for review by independent aviation safety specialists and key aviation industry stakeholders.

4. The Bill's Explanatory Memorandum states that …*notwithstanding mutual recognition, aircraft operators will still have to comply with rules of the air and certain laws of the country they are operating in, unless otherwise provided. Examples include laws relating to aviation security, curfew, air traffic control, airport slot management, noise and the environment, occupational health and safety and anti-discrimination legislation and all related business laws.*

   It is agreed to that compliance with such Australian laws is essential. However, if the government recognises the necessity of compliance with these requirements why are foreign aircraft not also required to comply with Australian law in relation to aviation safety standards? Additionally, as New Zealand registered aircraft are not permitted to carry armed Air Security Officers (ASOs) compliance with Australian and security requirements is not assured.

5. Government approval for operations within Australia pursuant to the Trans Tasman Mutual Recognition Agreement (TTMRA), the Closer Economic Relationship Trade Agreement (CERTA) and the Single Aviation Market (SAM) are broadly economic issues. The level of economic integration between

Australia and New Zealand is most properly a matter for Government determination. However:

- Proposed economic integration must not be permitted to attain primacy over critical Australian operational safety requirements and the safety or security of the travelling and general public;

- Where a foreign aircraft is approved to operate wholly within Australia the same level of safety and security analysis and regulatory oversight required of an Australian operator must be applicable.

6. The Bill states that "*with regard to mutual recognition, no commercial consideration will be permitted to override safety standards.*" However the justification for the Bill primarily economic and it is possible that the passage of this Bill may institutionalise dual safety standards within Australian aviation: traditional levels within full service Australian operations and a reduced safety standard for lower cost foreign operators. Economic and commercial factors must not be permitted to override operational safety in this fashion.

7. This submission recognises the internationally accepted principle of process equivalence in relation to safety and security systems and accepts that the individual processes employed by the Australian and New Zealand aviation systems may be different.

   However, that where specific components of safety and security systems have the ability to inflict catastrophic loss upon aviation systems individual risk assessment and evaluation within particular operational jurisdictions is warranted. My view in relation to such local evaluation of critical components is that:

   - A proposed alternative to a critical Australian system component must not provide for a manifestly lower safety or security standard;

   - The Government has historically demonstrated the principle of national jurisdictional assessment of critical safety components. For example, I understand that air transport category aircraft certified under the US Federal Aviation Regulations (FARs) are required to

undergo a pre-service engineering modification procedure prior the granting of an Australian Certificate of Airworthiness. Such aircraft are not permitted to operate revenue flights under and Australian Air Operators Certificate (AOC) until this local procedure is complete (aircraft are issued a special dispensation by CASA to fly from the US to Australia). Australian pre service modification requirements include (but are not necessarily limited to):

a. Upgrading of aircraft emergency lighting systems;
b. Installing of additional fire extinguishers;
c. Installing of additional oxygen bottles;

General operational procedural requirements may also vary between national aviation systems. As above, such jurisdictional differences reflect the levels of risk acceptability individual States consider acceptable as the basis of national hazard assessment processes. For example Australia, the UK and the USA require the incorporation of different crosswind components for the calculation of V1 take-off speeds for air transport category aircraft.

8. The Australian government recently reviewed the Australian requirements for cabin crew complements on board air transport category aircraft. This review determined that the critical nature of the cabin crew role, as poignantly demonstrated During the QF1737 hijack attempt, required an Australian cabin crew ratio of one crew member for each unit of 36 passengers.

   In contrast New Zealand aviation regulations require one crew member for each 50 passengers. This is a lower requirement than not only Australia's, but Canada, Europe and America's as well. The passage of this Bill will therefore import into the Australian aviation system one of the lowest crew member safety standards within the developed world in a key operational area.

   A further example of lower New Zealand regulatory requirements within cabin operations is the approved utilisation of a cabin crew complement of three cabin crew members on a major New Zealand operator's Airbus A320 aircraft. The European certification of this aircraft was conducted with four cabin crew

members[1]. Most national aviation regulatory bodies require that their minimum (whatever it may be) is not less than that required by the emergency evacuation certification demonstration[2]. This requirement is also stated under New Zealand Civil Aviation regulation 121.519 Flight Attendant Duty Assignment. However, under a New Zealand AOC the A320 may be permissibly operated with three cabin crew members[3].

Recommendations

This submission recommends that:

1. Any comparison between the Australian and New Zealand aviation systems is confined to individual components designed to mitigate substantially similar hazards.

2. Economic integration and commercial factors not be permitted to obtain primacy and aviation safety and security.

3. The analysis of comparative safety outcomes between the Australian and New Zealand aviation systems upon which the Bill is based be provided for independent public review.

4. Australia aviation safety and security standards not are not diluted through the importation of inferior foreign requirements, and that the government does not permit a "race to the bottom" through the importation of such inferior students.

5. The government requires foreign aircraft granted approval to operate wholly within Australia to meet Australian safety standards, in addition to aviation security, curfew, air traffic control, airport slot management, noise and the environment, occupational health and safety and anti-discrimination legislation and related business laws.

[1] Certification Document: Emergency/Evacuation Demonstration A320.
[2] For example The European JAR, US FAR and Singaporean CAR.
[3] Air New Zealand Safety and Emergency Procedures (SEP) Manual 31.1.3

6. The government accept the precedent of location specific hazard assessment of critical system components and require the continuation of this concept in relation to this Bill within Australia's jurisdiction.

7. The government does not permit operations within Australia of lower cabin crew ratios than was recently determined by parliament and not permit this Bill to facilitate a back door method of circumventing Australian law in this regard.

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